IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 94 of 2006
To
FIRST APPEAL No. 107 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SPL.LAQ OFFICER - Appellant
Versus
BHARVAD SOMABHAI RAMTUBHAI AMBARAM & 1 -Respondents

==========

Appearance :
MR RC KODEKAR, ASSTT.OVERNMENT PLEADER for Appellant.
MR AJ PATEL for claimants
MR AD OZA for acquiring body.

==========

CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 25/04/2006

ORAL COMMON JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Admitted. Mr.A.J.Patel, learned counsel, waives service of notice on behalf of the claimants in each appeal; whereas Mr.A.D.Oza, learned counsel, waives service of notice on behalf of Executive Engineer, Construction Section, Saurashtra Branch, Narmada Canal Yojana, Division No.1/3, Kadi in each appeal. The Registry is directed to accept appearance of learned counsel Mr.A.D.Oza, which may be filed by him on behalf of Executive Engineer, Construction Section, Saurashtra Branch, Narmada Canal Yojana, Division No.1/3, Kadi. Having regard to the facts of the case, the appeals are taken-up for final disposal today.

2. By filing the above-numbered appeals under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged the legality of the common judgment dated March 31, 2004, rendered by the learned 4th Jt.Civil Judge (S.D.), Mahesana, in Land Acquisition Reference Nos.3437 of 2003 to 3451 of 2003, by which the claimants are awarded additional

compensation at the rate of Rs.33/- per sq.mt. over and above the compensation awarded by the Land Acquisition Officer at the rate of Rs.6/- per sq.mt.

3. A proposal was received by the State Government to acquire lands of village Khavad, Taluka : Kadi for the public purpose of Irrigation Project of Narmada Saurashtra Canal. On scrutiny of the said proposal, the State Government was satisfied that lands of village Kavad were likely to be needed for the said public purpose. Therefore, notification under Section 4 of the Land Acquisition Act, 1894 [“the Act” for short] was issued which was published in Government Gazette on March 16, 1998. The owners, whose lands were proposed to be acquired, were served with notices under Section 4 of the Act. They filed their objections against proposed acquisition. After considering their objections, the Land Acquisition Officer forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands situated at

village Khavad were likely to be needed for public purpose of Irrigation Project of Narmada Saurashtra Canal. Therefore, notification under Section 6 of the Act was issued which was also published in Government Gazette. The interested persons were thereafter served with notices under Section 9 of the Act. In response to the said notices, the claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.200/- per sq.mt. However, having regarding to the evidence adduced before him, the Special Land Acquisition Officer awarded compensation to the claimants at the rate of Rs.6/- per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing requiring the Special Land Acquisition Officer to refer the matters to the Court for the purpose of determination of compensation. Accordingly, references were made to District Court, Mehsana, which were numbered as Land Acquisition Reference Nos.3437 of 2003 to 3451 of 2003. On behalf of the

claimants, witness Dasharathbhai Mangalbhai Patel was examined. It was stated by him that each claimant was taking three crops in each year from the acquired lands because each claimant was using fertilizer and chemical to get good crops. According to him, income of each claimant was Rs.35,000/- per Bigha. It was also mentioned by the said witness that all the facilities, such as, school, community-hall, water-works etc. were available in the village and, therefore, the claimants were entitled to enhanced compensation. It was mentioned by him that in past, lands from the same village were acquired on May 29, 1991, and in Land Reference Cases No.71 of 1995 to 86 of 1995, the Reference Court had awarded compensation to the claimants at the rate of Rs.22.30 Ps. per sq.mt. and that the said award of the Reference Court was confirmed by the High Court when First Appeal Nos.1419 of 2001 to 1434 of 2001 were dismissed. It was further mentioned by the witness that from this very village, other lands were acquired on May 1, 1993, wherein claimants were awarded compensation at the rate of Rs. 26.30 Ps. per sq.mt. and, therefore,

the claimants should be awarded higher compensation.

On behalf of the appellant, no rebuttal evidence was adduced at all. On consideration of the evidence adduced by the claimants, the Reference Court was of the opinion that previous awards produced by the claimants relating to the lands acquired from this very village furnished good guidance for determining market value of the lands acquired in this case. Therefore, after placing reliance on the previous awards, Reference Court has awarded additional compensation to the claimants at the rate of Rs. 33/- per sq.mt. giving rise to the above-numbered appeals.

4. This Court has heard Mr.R.C.Kodekar, learned Assistant Government Pleader appearing for the appellant as well as Mr.A.J.Patel, learned Senior Counsel appearing for the claimants, and Mr.A.D.Oza, learned counsel appearing for acquiring body, at length and in great detail. This Court has also considered previous awards and other evidence produced by the learned counsel for the parties for

perusal of the Court. Exh.11, which is judgment rendered by Gujarat High Court in First Appeal Nos.1419 of 2001 to 1434 of 2001 on April 30, 2001, indicates that for the public purpose of Narmada Yojana, lands of village Khavad were acquired pursuant to notification issued under Section 4 of the Act, which was published on September 25, 1991. In the said case, Land Acquisition Officer had awarded compensation at the rate of Rs. 27000/- per Hectare i.e. Rs.2.70 ps. per sq.mt. for irrigated lands and Rs.22,000/- per Hectare i.e. Rs. 2.20 Ps. per sq.mt. for non-irrigated lands. In references, the Reference Court had enhanced compensation at the rate of Rs.19/- per sq.mt. for non-irrigated lands and Rs.20/- per sq.mt. for irrigated lands. The award rendered by the Reference Court was challenged in First Appeal Nos.1419 of 2001 to 1434 of 2001. After hearing the learned counsels for the parties, the Division Bench of this Court held in paragraph-4 of the judgment delivered on April 30, 2001 as under :-

> “4. However, learned Govt.Pleader has submitted that in the present case, the references made under Sec.18

of the Act were time-barred. For that purpose, he has invited our attention to para 7 of the impugned order which shows that the Reference Court had passed the order on 29th June 1994 and the applications for reference had been made on 20th Sept., 1994. Learned Govt. Pleader has submitted that the Court did not consider the question of service of notice under Sec.12(2). However, he has failed to point out as to whether any such notice under Sec.12(2) had been issued and served or not and there is no pleading in this regard and no proof whatsoever. On the contrary, we find that the Reference Court had mentioned that it was not the case of the present appellants before the Reference Court that the claimants had been served with the notices along with the contents of the impugned awards and it was also not the case of the present appellants that the impugned awards had been declared in presence of the claimants or their Advocates or agents. Nothing has been stated or pointed out to substantiate the objection of limitation against the reference under Sec.18 as had been filed by the claimants and on the face of it, the references are found to be within time because the same had been filed on 20th Sept., 1994 while the award has been passed on 29th June, 1994. Thus, the objection with regard to the limitation as has been taken by learned Govt. Pleader while arguing these appeals is found to be misconceived and baseless."

In view of abovereferred to findings recorded by the Division Bench of this Court in First Appeal

Nos.1419 of 2001 to 1434 of 2001 decided on April 30, 2001, this Court is of the opinion that grant of additional compensation by the Reference Court to the claimants cannot be regarded as erroneous so as to warrant interference of this Court in the instant appeals. The instant appeals, which have no merits, are therefore, liable to be dismissed.

For the foregoing reasons, all the appeals fail and are dismissed. There shall be no order as to costs.

[J.M.PANCHAL, J.]

[BANKIM.N.MEHTA,J.]

(patel)